



Amended Originating application ~~for judicial review~~

No. **VID647** of 2023

Federal Court of Australia
District Registry: Victoria
Division: Administrative and Constitutional Law and Human Rights

RAELENE COOPER

Applicant

**NATIONAL OFFSHORE PETROLEUM SAFETY AND ENVIRONMENTAL MANAGEMENT
AUTHORITY and others named in the Schedule**

Respondents

THIS DOCUMENT IS IN A FORM THAT MAY BE UPLOADED TO THE ONLINE FILE

To the Respondents

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place:

The Court ordered that the time for serving this application be abridged to [Registry will insert date, if applicable]

Filed on behalf of (name & role of party) Raelene Cooper, Applicant
Prepared by (name of person/lawyer) Clare Lakewood
Law firm (if applicable) Environmental Defenders Office
Tel +61 8 6118 7912 Fax _____
Email Clare.lakewood@edo.org.au
Address for service Environmental Defenders Office, Suite 8.02 Level 8/6 O'Connell St, Sydney NSW
(include state and postcode) 2000



Date:

Signed by an officer acting with the authority
of the District Registrar



The Applicant applies to the Court to review, and, in the alternative, to restrain activity undertaken otherwise than in accordance with, the decision of the delegate of the First Respondent made on 31 July 2023 purportedly pursuant to reg 10 of the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (Cth) (**Environment Regulations**), to accept, subject to conditions, the Scarborough 4D B1 Marine Seismic Survey Environment Plan (Revision 7, June 2023) (**Seismic Survey EP**) to enable the Second Respondent and Third Respondent (collectively, the **Titleholders**) to undertake a new three-dimensional marine seismic survey (**MSS**)/baseline 4D MSS in the Northern Carnarvon Basin on the Exmouth Plateau located in Commonwealth waters 188 km north-west of Northwest Cape, Western Australia (**Activity**) (the **Decision**).

The application for judicial review is made pursuant to s 5(1) of the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (**ADJR Act**) and ss 39B(1) and (1A) of the *Judiciary Act 1903* (Cth) (**Judiciary Act**). The application to restrain is made pursuant to s 39B(1A)(c) of the Judiciary Act and/or ss 19, 22 and 23 of the Federal Court of Australia Act 1976 (Cth) (FCA Act).

Details of claim

The Applicant is aggrieved by the Decision because:

1. The Applicant is a Mardudhunera woman and a Traditional Custodian of Murujuga (also known as Burrup Peninsula), an area located in the Pilbara region in far north Western Australia that is coastally adjacent to the environment that may be affected by the Activity.
2. The Applicant is also a co-founder of Save Our Songlines, an unincorporated organisation dedicated to the protection of Murujuga, and its adjacent waters, from damage to Songlines, rock art, health and climate arising from the expansion of industry.
3. The Applicant and Save Our Songlines are, and are each recognised by the Titleholders to be, a “relevant person” within the meaning of reg 11A(1)(d) of the Environment Regulations.

Particulars

The Applicant refers to Tables 5-3 and 5-4 at pages 66 and 185-191 respectively of the Seismic Survey EP.

4. Save Our Songlines is, and is recognised by the First Respondent to be, a “relevant person” within the meaning of reg 11A(1)(d) of the Environment Regulations in the Decision.



Particulars

The Applicant refers to paragraphs [91]-[96] of the Statement of Reasons for the Acceptance (With Conditions) of the Scarborough 4D B1 Marine Seismic Survey Environment Plan (**Statement of Reasons**).

5. The Applicant is aggrieved by the Decision because:
- (a) she was not consulted as required by reg 11A of the Environment Regulations about the possible consequences of the Activity on her functions, interests and activities;
 - (b) the First Respondent was not satisfied that the Seismic Survey EP demonstrated that the Titleholders had consulted as required by reg 11A of the Environment Regulations; and,

the Decision was therefore unlawfully made.

Grounds of application for judicial review

1. The First Respondent did not have statutory power to make the Decision because the First Respondent was not reasonably satisfied that the Seismic Survey EP demonstrated that the consultation required by reg 11A of the Environment Regulations had been carried out, and so was not reasonably satisfied of the criteria in reg 10A(g)(i) and reg 10A(g)(ii).

Particulars

- (a) Regulation 9(1) of the Environment Regulations requires a titleholder, before commencing an activity, to submit an environment plan for the activity to the First Respondent.
- (b) Pursuant to reg 10(1), the First Respondent must accept a plan if the First Respondent is "*reasonably satisfied*" that the environment plan meets the criteria set out in reg 10A.
- (c) Pursuant to reg 10A(g), the criteria for acceptance of an environment plan include that the plan "*demonstrates that*:
 - (i) *the titleholder has carried out the consultations required by Division 2.2A; and*
 - (ii) *the measures (if any) that the titleholder has adopted, or proposes to adopt, because of the consultations are appropriate.*"



- (d) Regulation 11A(1) of Div 2.2A requires that “*in the course of preparing an environment plan or a revision of an environment plan, a titleholder must consult with*”, inter alia:
- (d) *a person or organisation whose functions, interests or activities may be affected by the activities to be carried out under the environment plan, or the revision of the environment plan; ...”*
- (e) The First Respondent recognised that the Applicant and Save Our Songlines had been identified by the Titleholders as “relevant persons” within the meaning of reg 11A(1)(d) of the Environment Regulations, in the Statement of Reasons at [92].
- (f) The First Respondent was not reasonably satisfied that consultation as required by reg 11A of Div 2.2A had been carried out, and, therefore:
- (i) was not reasonably satisfied that the criterion in reg 10A(g)(i) was met; and,
- (ii) was not reasonably satisfied that the criterion in reg 10A(g)(ii) was met.
- The Applicant refers to the Statement of Reasons at [94]-[97].
- (g) For the purposes of s 5 of the ADJR Act, the First Respondent:
- (i) did not have jurisdiction to make the Decision (s 5(1)(c));
- (ii) made a decision that was not authorised by the enactment in pursuance of which it was purported to be made (s 5(1)(d)); and,
- (iii) made a decision that involved an error of law (s 5(1)(f)).

Grounds of application to restrain

2. In the alternative, the commencement of the Activity is not authorised by the Seismic Survey EP, and would be unlawful, because the Decision is subject to express conditions with which the Titleholders have First Respondent has not complied.

Particulars

- (a) The Applicant refers to and repeats particulars (a)-(f) in Ground 1 above, and in particular paragraphs (e)-(f).



- (b) The First Respondent considered that representatives of Save Our Songlines had requested a second meeting with the Titleholders in order to further understand the Activity and to share information on their functions, interests or activities that may be affected by the Activity, and that this had not taken place before the Seismic Survey EP was submitted: Statement of Reasons at [94(e)].
- (c) The First Respondent considered that there was uncertainty as to whether there was additional information held by First Nations people on the cultural features of the environment, including spiritual and cultural connections to the environment that may be affected by the Activity: Statement of Reasons at [95].
- (d) The First Respondent decided to accept the Seismic Survey EP subject to certain conditions, including, without limitation, Conditions (1) and (3) set out in the Statement of Reasons at [133], which provided:
- 1) *Prior to commencement of the activity, the titleholders must consult with registered native title bodies corporate, representative Aboriginal / Torres Strait Islander bodies and other persons or organisations identified as a relevant person in relation to First Nations cultural heritage in Tables 5-3 and 5-4 of the EP to confirm whether:*
 - a) *They are aware of any people, who in accordance with Indigenous tradition, may have spiritual and cultural connections to the environment that may be affected by the activity that have not yet been afforded the opportunity to provide information that may inform the management of the activity.*
 - b) *There is any information they wish to provide on cultural features and/or heritage values.*
 - ...
 - 3) *The method of consultation is informed by the relevant persons being consulted.*
- (e) There has been no consultation with the Applicant or Save Our Songlines, at all, or, alternatively, by a method informed by the Applicant or Save our Songlines, since the date of the Decision.



- (f) Pursuant to reg 7(1)(b) it is an offence for a titleholder to undertake an activity in a way that is contrary to any limitation or condition applying to operations for the activity under the Environment Regulations.

Orders sought

1. A declaration pursuant to s 16(1)(c) of the ADJR Act or s 39B of the Judiciary Act that the Decision is invalid and set aside.
2. Alternatively to 1, an order pursuant to s 16(1)(a) of the ADJR Act, quashing or setting aside the Decision with effect from the date of the order or from such earlier or later date as the Court specifies.
3. An order in the nature of prohibition and/or an injunction under s 39B of the Judiciary Act, alternatively, s 16(1)(d) of the ADJR Act or ss 22 and 23 of the FCA Act, prohibiting or restraining on a final basis:
 - (a) the Second and Third Respondents from doing any act or thing pursuant to the Decision or, alternatively,
 - (b) the Second and Third Respondents from undertaking the Activity otherwise than after compliance with the conditions to which the Decision is subject.
4. Costs.
5. Such further or other orders as this Court thinks fit.

Applicant's address

The Applicant's address for service is:

Place: c/o Environmental Defenders Office, Suite 8.02 Level 8/6 O'Connell St, Sydney NSW
2000

Email: clare.lakewood@edo.org.au



Service on the Respondent

It is intended to serve this application on all Respondents.

Date: 17 August 7 September 2023

A handwritten signature in black ink, appearing to read "Clare Lakewood".

Signed by Clare Lakewood
Lawyer for the Applicant



Schedule

No. 647 of 2023

Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law and Human Rights

Respondents

Second Respondent:

WOODSIDE ENERGY SCARBOROUGH PTY LTD
ACN 650 177 227

Third Respondent:

WOODSIDE ENERGY (AUSTRALIA) PTY LTD
ACN 006 923 879

Date: 17 August 6 September 2023